

- All drafts of the documents referenced in this letter to the extent they are in the possession of the defendant or any entities controlled by the defendant;
- All emails in which the documents referenced in this letter and/or drafts of those documents are attached;
- All communications regarding the creation of the documents referenced in this letter and/or drafts of those documents;
- Metadata for all of the documents referenced in this letter and drafts of those documents (in other words, the documents should be produced in native form rather than with wiped metadata or after having been printed and then scanned); and
- The identity of witnesses who would authenticate these documents.

The Government also requests that the Court order the defendant to produce the witness who will authenticate the documents in question during the hearing, and order the defendant to provide Rule 26.2 materials for those witnesses, including but not limited to notes of preparation sessions, as well as any other witnesses the defendant intends to call.¹⁰

In addition to the Questioned documents, the Government also requests that the defendant produce discovery with respect to four additional defense exhibits that were produced to the Government on January 30, 2018 that also appear to be fabricated: (1) DX-B002 (a December 16, 2010 consulting agreement between Swartz IP and Graybox); (2) DX-N011 (a \$5 million note, dated November 18, 2011, between Pineboard Holdings and Graybox); (3) DX-N012 (a November 18, 2011 Pineboard securities purchase agreement); and (4) DX-V005 (a July 2, 2012 stock purchase agreement between Glendon Group and the successor to Swartz IP, Advisory IP Services). These exhibits are not Bates stamped, and their origins are unclear. And like the other fake documents described above, these four exhibits are PDF scans of printed out documents, unaccompanied by any transmittal email or metadata. They likewise purport to provide justification for certain flows of investor money and relationships among corporate entities. Based upon the Government's preliminary investigation, the Government does not believe that these documents were ever produced in response to grand jury subpoenas or process issued by the SEC, though they plainly fall within the scope of the subpoenas described above. The Government requests that the Court order the defendant to produce metadata for these four exhibits and to prove their authenticity at the hearing.

MEMO ENDORSED

Bergstein
is ordered
to produce
the items
in the 5 bullet
points on page 23
of the government's
letter of Feb 9, 2018

As to all documents
in footnote 2 of
the letter of
Feb 9, as well
as DX-B002,
DX-N011, DX-N012
and DX-V005
by Feb 13, 2018
at 5PM

SO ORDERED.

[Signature]
USDC

2-9-18